



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Release copies to District

Date: DEC 21 2000

Date

Surname

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated under the laws of the state of [redacted] on [redacted] for section 501(c)(3) purposes. Your activities consist of arranging for the obtaining of health insurance by underserved populations. You believe that small employers are underserved because of their employee's low rate of insurance.

You were not created by a specific statute in [redacted], but created with the full support and approval of the [redacted] Insurance Commissioner. Subsequent to the time that you were formed, the state of [redacted] enacted "the Business Health Partnership Act". The act provides that the state contracts with a not-for-profit corporation to channel potential federal, state and private subsidies for health insurance to low income employees of small employers of less than 50 employees. The not-for-profit entity would then offer enrollees a choice of competing health plans. The statute provides that individuals who can obtain health insurance under this provision need to earn less than 200% of the federal poverty level. You are an organization involved in this program and will coordinate premium contributions from employers, employees, and the State Children's Health Insurance Program (S-CHIP) to purchase family medical policies through employer sponsored plans. Additionally, you will coordinate state Medicaid funds with employer sponsored coverage for purchase of family health insurance policies in the workplace.

You will be supported by contributions from the general public, Medicaid, and other public funds. You will use these funds to negotiate health insurance policies for the small employers. The employees will then have the option to purchase health insurance from a variety of carriers. The employees pay the premiums to the selected carrier.

You will publicize your services through news releases, communications by local chambers of commerce and presentations to various organizations. Subsequently, over time

[REDACTED]

you believe your activities will shift from arranging for health care for low income employees of small employers to public education by disseminating information regarding subsidies available to previously uninsured individuals, and educating individuals about their choices in health plan options. Additionally, you will act as an advocate for patients in a managed care environment and research and analyze the factors that inhibit growth of public and private health insurance coverage in [REDACTED]

You currently have a Board of Directors with strong interests in employee medical benefits and plan on transitioning to a board that will consist of small business representatives.

LAW:

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax for corporations organized and operated exclusively for charitable, scientific or educational purposes, provided no part of the corporation's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" is used in Code section 501(c)(3) in its generally accepted legal sense. The promotion of health has long been recognized as a charitable purpose. See Restatement (Second) of Trusts, sections 368, 372 (1959); 4A Scott and Fratcher, The Law of Trusts, sections 368, 372 (4th ed. 1989); and Rev. Rul. 69-545, 1969-2 C.B. 117. It also includes lessening the burdens of government, and relief of the poor and distressed and under privileged.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279, 283 (1945), the Court stated that "the presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

Rev. Rul. 54-305, 1954-2 C.B. 127, provides that a corporation organized and operated for the primary purpose of operating and maintaining a purchasing agency for the benefit of its otherwise unrelated members who are exempt from federal income tax as charitable organizations, is engaged in business activities which would be unrelated activities if carried on by any one of the tax-exempt organizations served. Therefore, the corporation is not entitled to exemption under section 501(c)(3) of the Internal Revenue Code.

In Rev. Rul. 69-545, 1969-2 C.B. 117, the Service established the community benefit standard as the test by which the Service determines whether a hospital is organized and operated for the charitable purpose of promoting health.

Rev. Rul. 75-197, 1975-1 C.B. 156, held that a nonprofit organization that operates a free computerized donor authorization retrieval system to facilitate transplantation of body organs upon a donor's death qualifies for exemption under section 501(c)(3) of the Code because by facilitating the donation of organs which will be used to save lives, it is serving the health needs of the community and therefore is promoting health within the meaning of the

general law of charity.

Rev. Rul. 77-68, 1977-1 C.B. 142, held that a nonprofit organization formed to provide individual psychological and educational evaluations, as well as tutoring and therapy, for children and adolescents with learning disabilities qualified for exemption under section 501(c)(3) of the Code because it both promoted health and advanced education. Because its services are designed to relieve psychological tensions and thereby improve the mental health of the children and adolescents, it promoted health.

In Rev. Rul. 77-69, 1977-1 C.B. 143, an organization was formed as a Health Systems Agency (HSA) under the National Health Planning and Resources Development Act of 1974. As an HSA, the organization's primary responsibility was the provision of effective health planning for a specified geographic area and the promotion of the development within that area of health services, staffing and facilities that met identified needs, reduced inefficiencies and implemented the HSA's health plan. The revenue ruling concluded that by establishing and maintaining a system of health planning and resources development aimed at providing adequate health care, the HSA was promoting the health of the residents of the area in which it functioned. Therefore, the HSA qualified for exemption under section 501(c)(3) of the Code on the basis that it promoted health.

Rev. Rul. 81-298, 1981-1 C.B. 328, held that a nonprofit organization that provides housing, transportation and counseling to hospital patients' relatives and friends who travel to the locality to assist and comfort the patients qualifies for exemption under section 501(c)(3) of the Code because it promotes health by helping to relieve the distress of hospital patients who benefit from the visitation and comfort provided by their relatives and friends.

In Professional Standards Review Organization of Queens County, Inc. v. Commissioner, 74 T.C. 240 (1980), acq., 1980-2 C.B. 2 ("Queens County PSRO"), the Tax Court held that an organization that reviewed the propriety of hospital treatment provided to Medicare and Medicaid recipients was exempt under section 501(c)(3) of the Code because it lessened the burdens of government and promoted the health of persons eligible for Medicare and Medicaid.

In Rev. Rul. 81-276, 1981-2 C.B. 128, the Service held that a PSRO qualifies for exemption under section 501(c)(3) of the Code because it lessens the burdens of government and promotes the health of the beneficiaries of the Medicare and Medicaid programs.

Rev. Rul. 85-1, 1985-1 C.B. 177, provides that an organization is lessening the burdens of government when the organization's activities are activities that a governmental unit considers to be its own burden, and such activities actually lessen such governmental burden. An organization that provides funds to a county's law enforcement agencies to police illegal narcotics traffic lessens the burdens of government and therefore is described in section 501(c)(3).

Rev. Rul. 85-2, 1985-1 C.B. 178, provides that an organization that provides legal assistance to guardians ad litem who represent abused and neglected children before a juvenile

[REDACTED]

court that requires their appointment lessens the burdens of government and is also described in section 501(c)(3).

Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), involved an organization that operated restaurants and health food stores with the intention of furthering the religious work of the Seventh-Day Adventist Church as a health ministry. However, the Seventh Circuit held that these activities were primarily carried on for the purpose of conducting a commercial business enterprise. Therefore, the organization did not qualify for recognition of exemption under section 501(c)(3) of the Code.

In Federation Pharmacy Services, Inc. v. Commissioner, 72 T.C. 687 (1979), aff'd, 625 F.2d 804 (8th Cir. 1980), the Tax Court held that while selling prescription pharmaceuticals promotes health, pharmacies cannot qualify for recognition of exemption under section 501(c)(3) of the Code on that basis alone.

RATIONALE:

Under the regulations, an organization that is organized and operated exclusively for charitable purposes may qualify for exemption under section 501(c)(3) of the Code. The regulations also provide that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

The promotion of health has long been recognized as a charitable purpose. Whether a hospital promotes health in a charitable manner is determined under the community benefit standard of Rev. Rul. 69-545, supra. This standard focuses on a number of factors to determine whether the hospital benefits the community as whole rather than private interests. The application of the community benefit standard to exempt hospitals and other exempt health care organizations was sustained in Eastern Kentucky Welfare Rights Org. v. Simon, 506 F.2d 1278 (D.C. Cir. 1974), vacated on other grounds, 426 U.S. 26 (1975); and in Sound Health Association v. Commissioner, 71 T.C. 158 (1978), acq., 1981-2 C.B. 2.

The Service and the courts have recognized that the promotion of health includes activities other than the direct provision of patient care. See Rev. Rul. 81-298, supra; Rev. Rul. 81-276, supra; Rev. Rul. 77-69, supra; Rev. Rul. 77-68, supra; Rev. Rul. 75-197, supra; and Queens County PSRO, supra.

However, an organization that merely promotes health, without more, is not entitled to recognition of exemption under section 501(c)(3) of the Code. See Living Faith, Inc. v. Commissioner, supra; and Federation Pharmacy Services, Inc. v. Commissioner, supra.

Your activities consist of arranging for health insurance for employees of small employers in the state of [REDACTED] that earn no more than 200% of the federal poverty level. You will receive funding from small employers, other exempt organizations and federal funding,

[REDACTED]

which will enable you to negotiate health insurance premium rates on behalf of the small employers.

You have not shown that this activity satisfies the community benefit standard. You are operating a discounted purchasing agency for the benefit of the small employers that you serve which is similar to the organization described in Rev. Rul. 54-305, supra. Furthermore, you have not shown that arranging for discounted health insurance relieves the poor and distressed or underprivileged within the meaning of section 1.501(c)(3)-1(d)(2).

You have not provided any information that you are lessening the burdens of government of the state of [REDACTED]. The state of [REDACTED] enacted legislation indicating that it wants organizations to arrange for low cost health insurance for specific individuals, but while it encourages these types of organizations to provide these services, the state of [REDACTED] has never considered the activity of providing health insurance to be its own. Therefore, your activities do not constitute relief of the burdens of government. See Rev. Ruls. 85-1 and 85-2, supra. Basically, all you are doing is receiving a subsidy from the state to provide discounted health insurance to individuals that are not members of a charitable class.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

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[REDACTED]

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
[REDACTED] T:EO:RA:T:1
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,
(signed) Marvin Friedlander

Marvin Friedlander
Manager, EO Technical
Group 1